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OPENTV, INC., et al.,  
Plaintiffs,  
v.  
APPLE, INC.,  
Defendant.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. 14-cv-01622-HSG

**CLAIM CONSTRUCTION ORDER**

Re: Dkt. Nos. 95, 107, 111, 119

Plaintiffs OpenTV, Inc. and Nagravision, S.A. filed this patent infringement action against Defendant Apple, Inc. The parties seek construction of eight claim terms found in three of the asserted patents: Patent Nos. 5,884,033 (“the ’033 Patent”), 7,900,229 (“the ’229 Patent”), and 5,566,287 (“the ’287 Patent”). This order follows claim construction briefing, a technology tutorial, and a claim construction hearing.

**I. CLAIM CONSTRUCTION ANALYSIS****A. Legal Standard**

Claim construction is a question of law to be determined by the Court. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 391 (1996). Generally, claim terms should be given their ordinary and customary meaning—*i.e.*, the meaning that the terms would have to a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). There are only two circumstances where a claim is not entitled to its plain and ordinary meaning: “1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

When construing claim terms, the Federal Circuit emphasizes the importance of intrinsic

1 evidence such as the language of the claims themselves, the specification, and the prosecution  
2 history. *Phillips*, 415 F.3d at 1312–17. The claim language can “provide substantial guidance as  
3 to the meaning of particular claim terms,” both through the context in which the claim terms are  
4 used and by considering other claims in the same patent. *Id.* at 1314. The specification is likewise  
5 a crucial source of information. Although it is improper to read limitations from the specification  
6 into the claims, the specification is “the single best guide to the meaning of a disputed term.” *Id.*  
7 at 1315 (“[T]he specification is always highly relevant to the claim construction analysis. Usually,  
8 it is dispositive.” (internal quotation marks omitted)); *see also Merck & Co. v. Teva Pharm. USA,  
9 Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003) (“[C]laims must be construed so as to be consistent  
10 with the specification.”).

11 Despite the importance of intrinsic evidence, courts may also consider extrinsic evidence—  
12 technical dictionaries, learned treatises, expert and inventor testimony, and the like—to help  
13 construe the claims. *Phillips*, 415 F.3d at 1317–18. However, extrinsic evidence is “less  
14 significant than the intrinsic record in determining the legally operative meaning of claim  
15 language.” *Id.* at 1317 (internal quotation marks omitted).

16 **B. '033 Patent**

17 The '033 Patent, titled “Internet Filtering System for Filtering Data Transferred Over the  
18 Internet Utilizing Immediate and Deferred Filtering Actions,” claims a system and method that  
19 allows users to filter Internet transmissions containing objectionable material. The parties dispute  
20 the scope of two claim terms related to the filtering mechanism of the invention.

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1                   **1. “filters specifying immediate action” & “filters specifying deferred action”**

2 <b>Term</b>	3 <b>Plaintiffs’ Proposed Construction</b>	4 <b>Defendant’s Proposed Construction</b>
5                   filters specifying 6                   immediate action	6                   filters specifying whether to 7                   allow or block a transmission 8                   immediately and operate 9                   between the presentation and 10                   application levels of the 11                   seven-level ISO protocol 12                   model	13                   filters specifying whether 14                   transmission of the message 15                   should be unconditionally 16                   allowed or blocked based on a 17                   port number or network 18                   address specified in the 19                   message
20                   filters specifying 21                   deferred action	21                   filters specifying whether to 22                   allow or block a transmission 23                   conditionally and operate 24                   between the presentation and 25                   application levels of the 26                   seven-level ISO protocol 27                   model	22                   filters specifying whether 23                   transmission of the message 24                   should be allowed or blocked 25                   based on information in the 26                   message other than a port 27                   number or network address

12                   The ’033 Patent claims describe two types of filters that are used to determine whether a  
13                   transmission should be allowed or blocked: “filters specifying immediate action” and “filters  
14                   specifying deferred action.” For example, claim 1 describes:

- 15                   1. A method for communicating with servers over the Internet to  
16                   prevent or allow access to Internet sites, the method comprising  
17                   computer-implemented steps of:
  - 18                   (a) opening a data stream to send a message through an interface  
19                   to an Internet server;
  - 20                   (b) maintaining a database of filtering information comprising a  
21                   table of filters, said table comprising  
22                   (1) **filters specifying immediate action**, and  
23                   (2) **filters specifying deferred action**;
  - 24                   (c) comparing information in the message to filtering  
25                   information in at least one of said **filters specifying**  
26                   **immediate action** and said **filters specifying deferred**  
27                   **action**; and
  - 28                   (d) determining whether to prevent or allow the outgoing  
29                   transmission of the message based on the comparison.

30                   The parties dispute 1) on what basis the two types of filters are distinguishable and 2)  
31                   whether the filters operate only “between the presentation and application levels of the seven-level  
32                   ISO protocol model.”

i. Distinguishing “immediate action” filters from “deferred action” filters

The parties do not dispute that there must be some distinction between these two types of filters. Based on the ordinary meaning of the claim language, the immediate action filters operate immediately, while the deferred action filters operate on a deferred basis. The specification elaborates upon this distinction and explains that immediate action filters, when triggered, immediately and unconditionally indicate whether a transmission should be allowed or blocked, whereas deferred action filters, when triggered, delay specifying whether to block or allow a transmission until additional conditions are satisfied. The specification gives the following example:

In a preferred embodiment, the system compares an interface port and an IP address to a stored list of ports and addresses. If a match is found, the system can allow the message to be transmitted or block the message prior to transmission [*i.e.*, immediately and unconditionally indicate whether the transmission should be allowed or blocked]. The system can defer the decision whether to allow or block, and then monitor transmissions to search for a particular command and a particular filter pattern [*i.e.*, defer the allow/block decision until additional conditions are satisfied].

'033 Patent 1:41-47. What distinguishes the filters is whether, once the filters are retrieved, the decision to allow or block the transmission is made immediately and unconditionally or delayed until additional conditions are satisfied.

The specification further describes the filters as follows:

Each filter entry in the filter database also has a field for specifying an action to be taken by the client if that filter were retrieved. These actions are essentially divided into two groups, direct action or deferred action. Direct actions indicate that the system should unconditionally allow or unconditionally block the transmission. When filter entries are retrieved, they are first scanned for entries that require direct action; if there are any, these actions are carried out immediately.

*Id.* at 4:12-20. Additionally, the patentee uses “*i.e.*” to define “immediate action” as “unconditional allowing or blocking.” *Id.* at 4:49-50; *see Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009) (holding that a patentee’s use of “*i.e.*” “signals an intent to define the word to which it refers”).

In the '033 Patent prosecution history, the patentee distinguished the invention from prior

1 art partly on the basis of the '033 Patent's use of two types of filters. In contrast to the prior art,  
2 "[t]he presence of [the deferred action filters that include conditional fields] together with the  
3 direct action filters allows the type of highly selective filtering that is characteristic of Applicants'  
4 invention." Dkt. No. 107-13 at 8.

5 Defendant contends that the two filters must be distinguished on the basis of the  
6 information used by the filters to make the allow/block decision. Defendant argues that  
7 "[m]atching a port number or network address . . . is the only characteristic that differentiates  
8 filters 'specifying immediate action' from those 'specifying deferred action.'" Dkt. No. 111  
9 ("Opp.") at 9. But the specification does not expressly distinguish the filters based on the content  
10 of the information used to indicate whether a transmission should be allowed or blocked. Rather,  
11 as described above, the specification teaches that the filters differ as to whether they immediately  
12 and unconditionally block a transmission once they are triggered, or whether they defer the  
13 allow/block decision until additional conditions are satisfied.

14 Indeed, the very example cited in Defendant's opposition brief suggests that Defendant's  
15 construction cannot be correct:

16 As an example of blocking an HTTP transmission, assume that the  
17 user requests "http://www.domain/test.html." The client transmits  
18 the URL request and the domain name server returns an IP address,  
e.g. 1.2.3.4, corresponding to the domain name. The client tries to  
open a TCP/IP connection with that IP address and typically with  
port 80. If that IP address and port 80 . . . are together in a[n  
immediate action filter that specifies unconditional blocking], the  
system prevents the data stream from opening.

20 Rather than specifying blocking at this time, a filter can indicate a  
21 deferred action. In this example, the filter searches for a GET  
22 command as the keyword in an outgoing data stream, and for  
"test.html" as the filter pattern in the transmission. When the client  
23 sends a transmission with a GET command to get information under  
the directory test.html, the host server will respond with data for that  
directory. But if there is a blocking filter for test.html, the system  
24 can block the incoming data by discarding it or replacing it.

25 '033 Patent at 6:10-27. In this example, both types of filters are triggered by the user's URL  
26 request. The immediate action filter specifies whether to allow or block the transmission  
27 immediately and unconditionally based solely on the port number and the IP address returned  
28 from the domain name server in response to the URL request. The deferred action filter, also

1 activated by the user’s URL request, defers the allow/block decision until an additional condition  
2 is satisfied—namely, the user’s attempt to retrieve information under the test.html directory. The  
3 additional condition on which the deferred action filter bases its allow/block decision is whether a  
4 given keyword—test.html—matches information contained in the URL address associated with  
5 the user’s request. The Court finds that this example, in which a deferred action filter is triggered  
6 by a user’s URL request and applied using information derived from the directory portion of a  
7 URL address, is not consistent with Defendant’s construction of the deferred action filter as a  
8 “filter specifying whether transmission of the message should be allowed or blocked based on  
9 information in the message other than a port number or network address,” since a URL address is  
10 a type of network address.<sup>1</sup> *See* Opp. at 8 (noting that “URLs . . . , families of URLs, sites, or  
11 domains” are types of network addresses). A claim construction that is inconsistent with a  
12 preferred embodiment is “rarely, if ever, correct.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d  
13 1576, 1583 (Fed. Cir. 1996).

14 Figure 3 is also instructive. In Box 102, the embodiment depicted by Figure 3 obtains a  
15 list of the IP addresses associated with an opened port. “The system then checks for and *retrieves*  
16 *any filters* that match the particular IP address.” ’033 Patent 4:46-48 (emphasis added). The  
17 system then checks the “retrieved filters” and determines whether any immediate action filters are  
18 triggered; if they are, the decision to allow or block the transmission is made immediately. *See*  
19 ’033 Patent 4:48-50; Fig. 3, Boxes 106, 108, & 110. If no immediate action must be taken at this  
20 step, “it is determined whether a deferred action must be taken with respect to *any of the retrieved*  
21 *filter[s]*.” ’033 Patent at 4:65-67 (emphasis added). This written description of the illustration in  
22 Figure 3 teaches that a deferred action filter may be “retrieved” based on the list of IP addresses  
23 associated with an opened port, after which the system then delays the decision to allow or block

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25 <sup>1</sup> In fact, the specification expressly teaches that a URL may contain a directory, among other  
26 information. *See* ’033 Patent 2:67-3:10 (“To access a web site, the user enters a uniform resource  
27 locator (URL) request with the form “http://www.name.ext”, where “http://” indicates the  
28 protocol, and “www.name.ext” is a domain name . . . . The domain name can also be followed by  
other file names or directories, with the directories separated from the domain name and from  
other directories with slashes that serve as spacer characters. The directories sit below the home  
page, but are individually addressable and accessible.”).

1 the transmission until additional conditions are satisfied. *See* '033 Patent Fig. 3, Box 116; *id.* Fig.  
2 4. Thus, the specification does not distinguish the filters on the basis of the content used to make  
3 the decision whether to allow or block a transmission, but rather on whether the decision is made  
4 immediately and unconditionally, or delayed until additional conditions are satisfied.

5 Defendant's construction is also not consistent with the other '033 Patent claims.  
6 Dependent claim six describes "[t]he method of claim 5, wherein the message includes a URL,  
7 and step (c) includes comparing a domain name in the URL to filtering information in at least one  
8 of said filters specifying immediate action and said filters specifying deferred action." This claim  
9 plainly contemplates the application of both types of filters based on the same content: domain  
10 names and URLs, which are network addresses. *See also* '033 Patent claim 13 ("The method of  
11 claim 5, wherein the message includes a URL, wherein step (c) includes comparing a command in  
12 the URL to at least one of said filters specifying immediate action and said filters specifying  
13 deferred action."); claim 14 ("The method of claim 6, wherein step (c) include[s] comparing  
14 directory information in the URL to the filtering information.").

15 The Court concludes that the specification does not expressly define or limit the two types  
16 of filters on the basis of the content used by the filters to specify whether to allow or block a  
17 transmission. Indeed, the specification and the claims themselves suggest that both types of filters  
18 may base their allow/block decisions at least in part on "network addresses." The Court therefore  
19 rejects Defendant's proposed construction.

20 Plaintiffs' construction correctly reflects the distinguishing features of the two types of  
21 filters at a high level by construing the immediate action filters as operating "immediately" and the  
22 deferred action filters as operating "conditionally." But the Court finds that a more precise  
23 construction is both more accurate and more helpful to a jury. Accordingly, the Court finds that  
24 "immediate action filters" are "filters that, once they are retrieved, specify whether to allow or  
25 block a transmission immediately and unconditionally," and that "deferred action filters" are  
26 "filters that, once they are retrieved, defer the specification of whether to allow or block a  
27 transmission until additional conditions are satisfied."

## ii. ISO protocol model layer limitation

It is important to consider the prosecution history of a patent when construing claim language, as it often demonstrates “how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317. “[W]hen the patentee unequivocally and unambiguously disavows a certain meaning to obtain a patent, the doctrine of prosecution history disclaimer narrows the meaning of the claim consistent with the scope of the claim surrendered.” *Biogen Idec, Inc. v. GlaxoSmithKline LLC*, 713 F.3d 1090, 1095 (Fed. Cir. 2013).

In the '033 Patent prosecution history, the applicant explicitly distinguished certain prior art by stating that

[a]s discussed during the interview, the Schwed system and Applicants' methods operate at different layers of the seven-level ISO communication protocol model . . . [T]he packet filters of Schwed operate between the network interface hardware (level 2) and the network software (level 3). Applicants' filtering methods, by contrast, operate between the presentation and application levels (layers 6 and 7, respectively) of the seven-level ISO protocol model.

Dkt. No. 107-13 at 7.

Defendant seems to argue that this statement cannot constitute an unequivocal and unambiguous disclaimer because the patentee also distinguished the Schwed prior art by amending the '033 Patent to require two types of filters instead of just one. However, the Court sees no reason a patentee cannot distinguish prior art on two independent grounds, and Defendant does not cite to any authority to the contrary. Similarly, Defendant also argues that there was no clear and unmistakable disavowal during prosecution because the patentee did not amend the claims to require that the filters operate at layers six and seven of the ISO protocol model. Of course, if a patentee were required to amend his claims in order to limit their scope, there would be no need to examine the prosecution history for clear and unmistakable disavowals in the first place. The Court finds these arguments unpersuasive.

Finally, Defendant argues that Plaintiffs' construction must be incorrect because it would exclude preferred embodiments described in the specification. Defendant contends that it is "nonsensical" to filter messages on the basis of an IP address, for example, at the application or

1 presentation layer, because such filter could only operate at layer 3 (network layer). Opp. at 10.  
2 The parties' experts disagree on this issue. *See* Dkt. Nos. 113, 119-2. The Court finds that  
3 Plaintiffs' construction does not render the claims nonsensical. Defendant admitted at the  
4 technology tutorial that "[a]ll of the information . . . is available" at each layer of the model. Hr'g  
5 Tr. at 53 ("It's not like the information that is in the data is now not accessible at that layer. It is.  
6 It's just that the reason it's considered a header or the reason we refer to information that's added  
7 at that layer as a header is because that's information that that layer of the protocol has decided  
8 I'm responsible—for example, at the IP layer, I'm responsible for making sure this message gets  
9 to the intended destination.").

10 The Court finds that the '033 Patent prosecution history disclaimer that the filters operate  
11 only between layers six and seven of the seven-level ISO protocol model is "clear and  
12 unmistakable." *Biogen*, 713 F.3d at 1096. Therefore, these terms must be construed in light of  
13 that disclaimer.

14 \* \* \*

15 The Court construes the "immediate action filter" claim phrase as "filters that, once they  
16 are retrieved, specify whether to allow or block a transmission immediately and unconditionally  
17 and operate between the presentation and application levels of the seven-level ISO protocol  
18 model" and the "deferred action filter" claim phrase as "filters that, once they are retrieved, defer  
19 the specification of whether to allow or block a transmission until additional conditions are  
20 satisfied and operate between the presentation and application levels of the seven-level ISO  
21 protocol model."

22 **C. '229 Patent**

23 The '229 Patent, titled "Convergence of Interactive Television and Wireless  
24 Technologies," describes "a system and method for utilizing user profiles in an interactive  
25 television system." Essentially, the invention tracks user activity within the system and stores that  
26 information in a user profile. The user profile is then used to customize data sent to or retrieved  
27 by the user.

28 Defendant argues that the entire '229 Patent is invalid because the terms "activity related to

1 television viewing" and "activity unrelated to television viewing," on which all of the claims  
 2 depend, are indefinite. The parties further dispute the scope of two components of the system: the  
 3 "set-top box" and the "broadcast station."

4 **1. "activity [related / unrelated] to television viewing"**

Plaintiffs' Proposed Construction	Defendant's Proposed Construction
activity [related / unrelated] to watching television programming	indefinite

8 The '229 Patent uses this term in each of its independent claims to describe the types of  
 9 user activity information collected and assembled by the different components of the system. For  
 10 example, claim 1 describes:

11 1. A method for utilizing a user profile in an interactive television  
 12 system, the method comprising:

13 updating a user profile responsive to a first user activity, the first  
 14 user activity being initiated via a first device;

15 initiating a second user activity, the second user activity being  
 16 initiated via a second device which is different from the first device,  
 17 wherein either

- 18 (i) the first user activity is **related to television viewing**  
 19 and the second user activity is **unrelated to television viewing**, or
- 20 (ii) the first user activity is **unrelated to television viewing**  
 21 and the second user activity is **related to television viewing**;

22 accessing the user profile in response to the second user activity;  
 23 and

24 transmitting data to a user responsive to the second user activity,  
 25 wherein the transmitted data is based at least in part on the user  
 26 profile, and wherein the first user activity affects a content of said  
 27 data transmitted to the user responsive to the second user activity.

28 The Supreme Court recently clarified the standard courts must use to determine whether  
 29 patent claims are invalid for indefiniteness under § 112 of the Patent Act. In *Nautilus, Inc. v.*  
*Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014), the Supreme Court held "that a patent is invalid  
 30 for indefiniteness if its claims, read in light of the specification delineating the patent, and the  
 31 prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the

1 scope of the invention.” 134 S. Ct. at 2124. That definiteness standard “mandates clarity, while  
2 recognizing that absolute precision is unattainable.” *Id.* at 2129. The Federal Circuit has since  
3 interpreted the *Nautilus* holding to require that the intrinsic evidence “provide objective  
4 boundaries” on the scope of the claim meaning. *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d  
5 1364, 1371 (2014).

6 Defendant argues that “activity [unrelated / related] to television viewing” is indefinite  
7 because the intrinsic evidence does not provide objective distinctions between the two types of  
8 activities, and therefore the infringement determination is left to subjective opinion. But the cases  
9 cited by Defendant dealt with “purely subjective” claim phrases. *Datamize, LLC v. Plumtree*  
10 *Software, Inc.*, 417 F.3d 1342, 1351 (Fed. Cir. 2005) (holding that the phrase “aesthetically  
11 pleasing” was indefinite because the scope of that phrase’s meaning “depend[s] solely on the  
12 unrestrained, subjective opinion of a particular individual purportedly practicing the invention”);  
13 *see also Interval Licensing*, 766 F.3d at 1374 (holding that the term “in an unobtrusive manner”  
14 did not satisfy the *Nautilus* standard because it “is highly subjective” and the intrinsic evidence did  
15 not provide an “objective boundary” on its scope). Unlike the terms at issue in *Datamize* or  
16 *Interval Licensing*, the “television viewing” terms contain an inherent objective distinction  
17 between the two types of activities: whether or not a given activity is related to television viewing  
18 is a determination that can be made without resort to subjective opinion.

19 Whatever ambiguity may be introduced by the language of the claims is clarified by the  
20 prosecution history. These terms were added during prosecution to distinguish the invention  
21 described by the ’229 Patent from prior art that did not teach or suggest “that a television program  
22 guide and any number of non-program-guide applications may share a common user profile,  
23 exchange data, or affect each other’s operation in any way.” Dkt. No. 107-21, at  
24 OPENTV0002726. In other words, the ’229 Patent improved upon the prior art by allowing an  
25 interactive television system to incorporate user activity information gleaned from activities not  
26 related to the actual viewing of television into a user profile also populated with information  
27 sourced from activities related to television viewing. The prosecution history contains several  
28 examples of activities related to television viewing and disclosed by the prior art, such as remotely

1 accessing program listings, scheduling program reminders, adjusting parental control settings,  
 2 accessing interactive television program guide functionality related to preferences or “favorites”  
 3 settings, and scheduling recordings of television programs. *Id.* at OPENTV0002724-25. These  
 4 examples suffice to “inform, with reasonable certainty, those skilled in the art about the scope of  
 5 the invention.” *Nautilus*, 134 S. Ct. at 2124; *see also Interval Licensing*, 766 F.3d at 1373 (“[A]  
 6 patent which defines a claim phrase through examples may satisfy the definiteness requirement.”);  
 7 *Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1335 (Fed. Cir. 2010) (finding that claim  
 8 phrase “not interfering substantially” was not indefinite because the prosecution history listed  
 9 eight specific examples of things that did not interfere substantially). That some gray area  
 10 regarding the scope of these terms may remain does not doom them as indefinite; as *Nautilus*  
 11 recognizes, “absolute precision is unattainable.” 134 S. Ct. at 2129.<sup>2</sup>

12 Plaintiff argues that its construction reflects that the user activities contemplated by the  
 13 ’229 Patent relate to watching television *programming* rather than generically viewing a physical  
 14 television—theoretically, a television could be used to engage in activities unrelated to watching  
 15 television programming, such as browsing the internet. The Court agrees that the intrinsic  
 16 evidence supports Plaintiff’s construction and accordingly adopts it.

17 **2. “set-top box”**

19 <b>OpenTV Proposed Construction</b>	20 <b>Apple Proposed Construction</b>
21 a device that receives a programming signal and outputs audio and video signals for presentation on display	device that decodes and tunes television signals

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23 <sup>2</sup> Plaintiff also asserts that Defendant waived its indefiniteness argument by failing to allege that  
 24 the ’229 Patent is invalid as indefinite in its invalidity contentions. The Court finds this argument  
 25 meritless. In its invalidity contentions, Defendant identified “grounds of invalidity [of the ’229  
 26 Patent] based on (1) lack of written description . . . (2) lack of enablement . . . and (3)  
 27 indefiniteness under 35 U.S.C. § 112, second paragraph.” Dkt. No. 107-24 at 55. Defendant then  
 28 stated that “[t]o the extent the following limitations are even definite (under 35 U.S.C. § 112,  
 second paragraph), the ’229 Patent fails to sufficiently describe them,” and listed the “activity  
 [unrelated / related] to television viewing” term. *Id.* In all of its subsequent representations to  
 Plaintiff, Defendant asserted its indefiniteness argument regarding this term. The Court finds that  
 Defendant provided more than adequate notice to Plaintiff of its contention that this term is invalid  
 as indefinite, and therefore did not waive this argument.

1        This term describes a component of the claimed invention that may be used to conduct and  
2 transmit user activity, and store a user profile based on that activity. *See '229 Patent claims 6, 11,*  
3 *14.*

4 Defendant limits the term “set-top box” to a device that is capable of “decod[ing] and  
5 tun[ing] television signals” based on the specification’s disclosure that the set-top box may receive  
6 “television programming” signals. *See* ’229 Patent at 6:44-45. But the words “decode” and  
7 “tune” do not appear anywhere in the specification. Furthermore, the specification also discloses  
8 that signals sent and received by the set-top box “may encompass a wide variety of data  
9 exchanges,” *including* “analog or digital signals,” “signals for high-definition television,” and  
10 “internet communications.” *Id.* at 6:42-52. Defendant’s construction suggests that the set-top box  
11 must be capable of decoding and tuning television signals. There is no indication in the  
12 specification that the invention excludes set-top boxes that are not capable of processing such  
13 signals, and the Court declines to read such a limitation into the patent. Plaintiffs’ construction, on  
14 the other hand, properly encompasses all of the data exchanges disclosed by the specification.

Defendant further argues that Plaintiffs' construction fails to distinguish between set-top boxes and the "remote units" also included in the system, because cell phones and laptops, which are embodiments of the remote units, are equally capable of receiving a programming signal and outputting audio and video signals for presentation on a display. However, nothing in the '229 Patent indicates that the set-top box and the remote unit cannot be embodied by two of the same type of device—*e.g.*, two different laptop computers. The Court finds that the intrinsic evidence does not require these two components to be embodied by mutually exclusive devices.

22 The Court adopts Plaintiffs' proposed construction, as it best reflects the meaning of this  
23 term in light of the intrinsic evidence.

### 3. “broadcast station”

<b>OpenTV Proposed Construction</b>	<b>Apple Proposed Construction</b>
station configured to deliver programming to multiple devices	station configured to deliver programming to all network destinations simultaneously

1        This term describes a component of the claimed invention that may be used to store the  
2 user profile and “convey a programming signal to the set-top box.” *See* ’229 Patent claims 11, 14.

3        The specification discloses that content transmitted by the broadcast station within the  
4 system “may be ‘pushed’ to the mobile unit (i.e. sent without a user request) or ‘pulled’ (sent to  
5 the mobile unit based on a user request or other action).” *Id.* at 2:54-56. Thus, the broadcast  
6 station must be capable of delivering content on an individualized basis, in response to a “pull”  
7 request. Similarly, the specification describes embodiments by which the broadcast system allows  
8 users to send and receive e-mails, which likewise would need to be transmitted on an  
9 individualized basis. *Id.* at 6:50-51.

10       On its face, Defendant’s construction does not allow for the individualized transmission of  
11 data contemplated by the specification. Defendant argues that the “pull” data requests could be  
12 accomplished by transmitting a generic signal to all users and filtering that transmission  
13 individually upon receipt. There is no support in the specification for such a filtering method; that  
14 the invention *could* be embodied in this way of course does not mean that the Court should limit it  
15 to this embodiment, particularly when it is not described anywhere in the specification.

16       Defendant further argues that its construction encompasses broadcast stations that deliver  
17 programming separately to multiple users, so long as the broadcast station is capable of also  
18 delivering programming simultaneously to all users. But Defendant’s construction therefore  
19 excludes broadcast stations that *only* deliver programming on an individualized basis to multiple  
20 devices. The specification provides no support for such an interpretation.

21       The Court adopts Plaintiffs’ proposed construction, as it best reflects the meaning of this  
22 term in light of the intrinsic evidence.

23       **D.    ’287 Patent**

24       The ’287 Patent, titled “Method for Asynchronously Maintaining an Image on a Display  
25 Device,” claims a method that “optimize[s] the perceived response of [an] application program”  
26 by separating “screen updates” from “graphic object attribute changes.” ’287 Patent 9:47-53.  
27 Essentially, the invention allows an application program to store and optimize a series of graphic  
28 object attribute changes before actually implementing those changes by redrawing the graphic

1 objects on the screen. By separating the latter function, which uses a large amount of processing  
2 power, from the former, the invention can be used to improve the user's perceived response of the  
3 application program. *See id.* at 9:33-37.

4 The independent method claim describes:

5 1. In a processing system executing an application program  
6 displaying a plurality of graphic objects, a method for  
7 asynchronously maintaining an image on a display device,  
8 comprising the steps of:  
9  
10 receiving a **drawing request** from the application program;  
11 determining a drawing area of the image in response to the  
12 received **drawing request**;  
13 inserting a new entry representing the drawing area into a list  
14 of a plurality of entries each representing respective drawing  
15 areas;  
16 receiving an **image update request** from the application  
17 program;  
18 retrieving one of the plurality of entries representing drawing  
19 areas from the list; and  
20  
21 **requesting that respective graphic objects be redrawn if  
22 any portion of the graphic object lies within the drawing  
23 area represented by the retrieved entry.**

24 The parties dispute the meaning of the three bolded claim phrases in the six-step method  
25 described by the independent claim.

26 **1. "drawing request"**

27 <b>OpenTV Proposed Construction</b>	28 <b>Apple Proposed Construction</b>
29 a request to draw one or more 30 graphic objects on the display device	31 notification that an attribute of a 32 graphical object has changed

33 This term describes the initial communication from the application program to the  
34 processing system that implements the claimed method.

35 As a threshold matter, Defendant argues that the specification describes a single  
36 embodiment as the invention, and therefore, the claims must be construed to reflect the scope of  
37 that described embodiment. The specification describes Figure 1 as "a diagram . . . illustrating the  
38 operation of a processing system incorporating the present invention." '287 Patent 2:26-28, 2:41-

1       43. Unlike the patents at issue in the cases cited by Defendant, the '287 Patent does not say that  
2       the Figure 1 embodiment *is* the present invention. *See Lydall Thermal/Acoustical, Inc. v. Federal-*  
3       *Mogul Corp.*, 344 F. App'x 607, 614 (Fed. Cir. 2009) ("The specification identifies a three-  
4       layered batt as 'the present invention.'"); *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503  
5       F.3d 1295, 1308 (Fed. Cir. 2007) (holding that claim must be construed in light of limitation  
6       contained in specification's description of "the present invention"); *see also Honeywell Int'l, Inc.*  
7       *v. ITT Indus., Inc.*, 452 F.3d 1312, 1318 (Fed. Cir. 2006) ("On at least four occasions, the written  
8       description refers to the [disputed term] as 'this invention' or 'the present invention.'"). And the  
9       mere fact that the specification discloses only a single embodiment does not mandate that the  
10       claims be limited to that embodiment. *See Phillips*, 415 F.3d at 1323 ("[W]e have expressly  
11       rejected the contention that if a patent describes only a single embodiment, the claims of the patent  
12       must be construed as being limited to that embodiment. That is not just because section 112 of the  
13       Patent Act requires that the claims themselves set forth the limits of the patent grant, but also  
14       because persons of ordinary skill in the art rarely would confine their definitions of terms to the  
15       exact representations depicted in the embodiments."). The Court finds that the specification does  
16       not explicitly limit the claims to the embodiment depicted in Figure 1.

17       Even if the Court were to limit the scope of the "drawing request" term to that illustrated  
18       by the embodiment depicted in Figure 1, Defendant's construction would be problematic. The  
19       plain language of the claim term and the detailed description of the specification mandate that a  
20       "drawing request" be construed as a "request," rather than a "notification." The claims  
21       consistently describe this step of the method as a "request," and the term "notification" does not  
22       appear anywhere in the claims or the specification. *See* '287 Patent claims 1 ("receiving a  
23       drawing *request* from the application program"), 5 ("the step of receiving a drawing *request*  
24       comprises the step of receiving a *request* to draw a graphic object on the image"), and 7 ("the step  
25       of receiving a drawing *request* comprises the step of receiving a *request* to move a graphic object  
26       on the image"); *see also id.* 3:19-23 (referring to Figure 1 and teaching that an "application  
27       program interface (API) is provided to an application programmer, in a known manner, to permit a  
28       *request* for [a change to the attribute of a graphic object]"). Defendant's only argument in support

1 of its construction of the term as a “notification” is that “[t]he arrow connecting boxes 302 and  
2 342 in Figure 1 demonstrates that the application notifies the display manager whenever a graphic  
3 attribute changes.” Opp. at 21. The Court is not persuaded that an arrow necessarily symbolizes a  
4 “notification” rather than a “request.” Accordingly, the Court construes a “drawing request” as a  
5 request, not a notification.

6 Exactly what is being requested by the drawing request is another matter. While Plaintiffs  
7 argue that the plain language of the claims and the specification support its construction that it is a  
8 request to “draw,” the intrinsic evidence makes clear that no actual drawing occurs as a result of  
9 the drawing request. *See* '287 Patent 5:18-19 (“The screen is not redrawn at this point.”). Indeed,  
10 actually drawing graphic objects in response to a drawing request would defeat the very purpose  
11 of the invention, which is to “mak[e] screen updates asynchronous from graphic object attribute  
12 changes.” '287 Patent 9:47-48. The Court therefore finds that Plaintiffs’ construction is not  
13 tenable in light of the intrinsic evidence.

14 Plaintiffs argue that Defendant’s construction is likewise untenable because it would  
15 exclude certain types of drawing requests, such as those directing that a new graphic object be  
16 created or that an existing graphic object be refreshed. Neither the specification nor the claims  
17 contemplate the “refreshing” of graphic objects. That aside, both the creation of a new graphic  
18 object and the refreshing of an existing graphic object would involve changes to attributes of at  
19 least one graphic object on the display device: the screen, on top of which all other graphic objects  
20 are layered. As such, construing the term “drawing” as “changing an attribute of a graphic object”  
21 best reflects what action is being requested by a drawing request.

22 The Court finds that the “drawing request” term, read in light of the intrinsic evidence,  
23 should be construed to mean “a request to change an attribute of a graphic object.”

24 **2. “image update request”**

25 <b>OpenTV Proposed Construction</b>	26 <b>Apple Proposed Construction</b>
27 a request to redraw one or more graphic objects on the display device	instruction to initiate a screen redraw

28 While the “drawing request” in step one of the claimed method initiates the storage and

1 optimization of graphic attribute changes, the “image update request” in the fourth step initiates  
2 the process by which the optimized graphic object attribute changes are actually redrawn.

3 For the same reasons articulated above, the Court construes the image update request as a  
4 “request” rather than an “instruction.” Both the claims and the specification consistently describe  
5 this term as a request; the word “instruction” does not appear anywhere in the Patent. The Court  
6 finds that Defendant points to no persuasive evidence that would justify construing this term as an  
7 instruction. Accordingly, the Court construes the “image update request” as a request.

8 Considered in light of the specification and the other steps that comprise the claimed  
9 method, neither of the parties’ proposed constructions adequately reflects what action is being  
10 requested by the “image update request.” The last three steps of the method are: 1) receive an  
11 image update request from the application program; 2) retrieve one of the drawing area entries  
12 from the stored list; and 3) request that graphic objects be redrawn if so indicated by the retrieved  
13 entries. If the “image update request” were a “request to redraw,” as argued by Plaintiffs, then the  
14 last step of the claimed method would be redundant (“requesting that respective graphic objects be  
15 redrawn”). Similarly, Defendant’s construction that the image update request “initiate[s] a screen  
16 redraw” is not entirely accurate, as the actual redraw is not initiated until the last step of the  
17 claimed method. Rather, the image update request is exactly as it sounds: a request from the  
18 application program to update the image on the display device, which update is then accomplished  
19 by retrieving the drawing area entries and redrawing the graphic objects as indicated.

20 Accordingly, the Court construes the “image update request” term as “a request to update  
21 the image on the display device.”

22 **3. “requesting that respective graphic objects be redrawn if any portion of the  
23 graphic object lies within the drawing area represented by the retrieved  
entry”**

24 25 <b>OpenTV Proposed Construction</b>	26 27 <b>Apple Proposed Construction</b>
28 plain and ordinary meaning	commanding every object that overlaps the drawing area represented by the retrieved entry to call low level graphics routines to redraw itself

1        This term describes the last step of the claimed method, whereby the graphic objects are  
2        actually drawn on the display device.

3        For the same reasons articulated above, the Court construes this step of the method as a  
4        “request” rather than a “command.” Both the claims and the specification consistently describe  
5        this term as a request; the word “command” does not appear anywhere in the Patent. The Court  
6        finds that Defendant points to no persuasive evidence that would justify construing this term as an  
7        command and accordingly construes this step as a request.

8        Although claim terms are usually given their plain and ordinary meaning, an exception  
9        exists where “the patentee acted as his own lexicographer and clearly set forth a definition of the  
10        disputed claim term in either the specification or prosecution history.” *CCS Fitness, Inc. v.*  
11        *Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). The use of “i.e.” in the specification  
12        “signals an intent to define the word to which it refers.” *Edwards*, 582 F.3d at 1334; *see also*  
13        *Abbott Labs. v. Novopharm Ltd.*, 323 F.3d 1324, 1330 (Fed. Cir. 2003) (holding that the district  
14        court “did not err by reading the patentee’s definition from the specification into the claim” where  
15        the patentee “explicitly defined” a term by preceding the term with “i.e.” in the specification).  
16        However, the plain definitional meaning of “i.e.” will not carry the day where such a reading  
17        would exclude a preferred embodiment from the claim’s scope, or where a “contextual analysis”  
18        of the patent indicates that “i.e.” is used in an exemplary rather than definitional way. *See*  
19        *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1326 (Fed. Cir. 2012). Defendant argues that the ‘287  
20        patentee acted as his own lexicographer by expressly defining the term “redraw” as “calling low  
21        level graphics routines to redraw.” Plaintiffs contend that no construction is necessary, and that  
22        Defendant’s construction improperly imports limitations from the specification.

23        The ’287 Patent consistently and repeatedly makes clear that the verb “redraw,” in the  
24        context of the patent and as used in this sixth step of the claimed method, means “call low level  
25        graphics routines to draw a graphic object”:

26        • “The REDRAW method first determines if any portion of the  
27        graphic object lies within the boundary box. If so, then that  
28        graphic object **calls low-level graphic display routines**  
                  **which will redraw that graphic object.** **Otherwise,**  
                  **nothing is done.**” ’287 Patent at 5:40-44.

- 1       • “The REDRAW method for an object first determines if any  
2       portion of [the] graphic image representing that object lies  
3       within the boundary box (from box 346 of FIG. 1). If so, the  
4       REDRAW method **calls the low level graphic routines**  
5       **which draw the object represented by that node on the**  
6       **display screen according to the attributes of that graphic**  
7       **object.”** *Id.* at 6:17-23.
- 8       • “For example, to draw a box object, **low level graphic**  
9       **routines are called** which will draw a box at the position  
10      specified by the position attribute of the box object . . . .” *Id.*  
11      at 6:24-26.
- 12      • “As another example, to draw a text object, **low level**  
13      **graphic routines are called** which will draw the image of  
14      the characters in the strong attribute at the position specified  
15      in the position attribute having the size specified in the size  
16      attribute.” *Id.* at 6:30-33.
- 17      • “The REDRAW method of the screen object 10 first  
18      determines from its graphic attributes if any portion lies  
19      within the boundary box. In this case, it does not, so **no low**  
20      **level graphic routines are called.**” *Id.* at 6:65-7:2.
- 21      • “Because the time text object 24 does lie within the  
22      boundary box, **low level routines are called** to draw the  
23      time text object, according to its attributes. **I.e.** the  
24      characters representing the new time are drawn on the  
25      image.” *Id.* at 7:25-27.
- 26      • “The lower right-hand corner of the surrounding box object  
27      31 lies within the boundary box, so it is redrawn (**i.e. low**  
28      **level graphic routines are called**).” *Id.* at 7:44-46.
- 29      • “The screen background lies within the OLD rectangle, so it  
30      is redrawn (**i.e. low level graphic routines are called**) by  
31      the REDRAW method for the screen object 10 as described  
32      above.” *Id.* at 8:47-51.

33      Contrary to Plaintiffs’ argument, this is not the “mere use of ‘i.e.’” Dkt. No. 119 (“Reply”)  
34      at 15. Rather, the patentee acted as his own lexicographer and explicitly defined the term  
35      “redraw” as “call low level graphics routines.” The use of “i.e.” in the context of the ‘287 Patent  
36      is analogous to its use in the patent at issue in *Abbott*, where the court was tasked with construing  
37      the term “co-micronization of fenofibrate and a solid surfactant.” 323 F.3d at 1330. The district  
38      court construed that phrase as the micronization of fenofibrate and solid surfactant “in the absence  
39      of other excipients,” based on the patentee’s use of “i.e.” to “explicitly define[]” the phrase as  
40      “micronization of an intimate mixture of fenofibrate and a solid surfactant.” *Id.* Likewise, here,

1 the '287 patentee has used "i.e." to explicitly define "redraw" as "call low level graphics routines."  
2 Furthermore, the patentee uses that definition throughout the specification, with and without "i.e."  
3 as a preceding term, to describe the mechanism of this sixth step of the claimed method.

4 In *Dealertrack and Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358 (Fed. Cir. 2012), the  
5 Federal Circuit held that a patentee's use of "i.e." in the specification did not indicate an intent to  
6 expressly define a term. But considered in context, the patentees in those cases used "i.e."  
7 differently than the phrase is used in the '287 Patent. In *Toshiba*, the Federal Circuit's holding  
8 turned on the fact that the patentee used "i.e." to explain the meaning of a claim term within the  
9 specific context of one example of the embodied invention. 681 F.3d at 1370. The court held that  
10 "[i]t does not follow" that such definition should be imputed to the claim term "in all instances"  
11 based on that limited definition. *Id.* Here, in contrast, the patentee did not limit the definition of  
12 "redraw" to a particular example. Rather, "redraw" is defined as "call low level graphic routines"  
13 both in the abstract and in the specific context of all examples described in the specification.

14 In *Dealertrack*, the Federal Circuit held that "[t]he only way that the 'i.e.' in this patent  
15 could be read definitionally is if it excluded from the claim scope [several] embodiments discussed  
16 throughout the claim." 674 F.3d at 1326. In contrast, reading "i.e." definitionally in the '287  
17 Patent would not exclude any described embodiments from the claim's scope. Furthermore, the  
18 *Dealertrack* court held that "the most natural reading of the 'i.e.' here is as citing examples, which  
19 . . . is the way it was used throughout the specification in other contexts." *Id.* In the '287 Patent,  
20 by contrast, "i.e." is consistently used definitionally, and the patentee used "e.g." or "for example"  
21 when he wished to list examples of a concept rather than define a particular term. *See* '287 Patent  
22 5:9-11 (using "i.e." to define "the position attribute of a graphic object is changed" as "the graphic  
23 object is moved from one place to another"), 1:50-52 (using "e.g." to identify "responding to user  
24 inputs" as an example of "other processing functions [that] may be more important in increasing  
25 the perceived response speed than the screen drawing function").

26 The Court finds that this claim phrase should be construed as "requesting that respective  
27 graphic objects call low level graphics routines to redraw themselves if any portion of the graphic  
28 object lies within the drawing area represented by the retrieved entry."

1           **II. CONCLUSION**

2           The Court construes the disputed terms as follows:

3 <b>Term</b>	4 <b>Asserted Claims</b>	5 <b>Construction</b>
<b>'033 Patent</b>		
6           filters specifying immediate 7           action	8           1, 15, 23	9           filters that, once they are retrieved, 10          specify whether to allow or block a 11          transmission immediately and 12          unconditionally and operate between 13          the presentation and application levels 14          of the seven-level ISO protocol model
15          filters specifying deferred 16          action	17          1, 15, 23	18          filters that, once they are retrieved, 19          defer the specification of whether to 20          allow or block a transmission until 21          additional conditions are satisfied and 22          operate between the presentation and 23          application levels of the seven-level 24          ISO protocol model
<b>'229 Patent</b>		
25          set-top box	26          6, 11, 14, 16, 18, 20, 27          21, 27	28          a device that receives a programming 29          signal and outputs audio and video 30          signals for presentation on display
31          broadcast station	32          11, 14, 18	33          station configured to deliver 34          programming to multiple devices
35          activity [related/unrelated] to 36          television viewing	37          1, 5, 9, 14, 26	38          activity [related / unrelated] to 39          watching television programming
<b>'287 Patent</b>		
40          drawing request	41          1, 5, 7	42          a request to change an attribute of a 43          graphic object
44          image update request	45          1, 16	46          a request to update the image on the 47          display device
48          requesting that respective 49          graphic objects be redrawn if 50          any portion of the graphic 51          object lies within the drawing 52          area represented by the 53          retrieved entry	54          1	55          requesting that respective graphic 56          objects call low level graphics routines 57          to redraw themselves if any portion of 58          the graphic object lies within the 59          drawing area represented by the 60          retrieved entry

24           **IT IS SO ORDERED.**

25           Dated: June 5, 2015



26             
27           HAYWOOD S. GILLIAM, JR.  
28           United States District Judge